

(2) May not produce more than 2,000,000 barrels of beer per calendar year; and

(3) May not be a member of a “controlled group” of brewers whose members together produce more than 2,000,000 barrels of beer per calendar year.

The appropriate TTB officer shall deny use of the reduced rate of tax provided by 26 U.S.C. 5051(a)(2) where it is determined that the allowance of such a reduced rate would benefit a person who would otherwise fail to qualify for use of such rate.

(b) *Definitions.* For the purpose of determining eligibility for payment of the reduced rate of tax on beer, terms have the following meanings:

(1) *Controlled group.* A related group of brewers as defined in 26 U.S.C. 5051(a)(2)(B). Controlled groups include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2);

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3); and

(iii) Combined groups as defined in 26 CFR 1.1563-1(a)(4). Stock ownership in a corporation need not be direct and 51% constructive ownership, defined in 26 CFR 1.1563-3, may be acquired through:

- (A) An option to purchase stock;
- (B) Attribution from partnerships;
- (C) Attribution from estate or trusts;
- (D) Attribution from corporations; or
- (E) Ownership by spouses, children, grandchildren, parents, and grandparents.

(2) *Production of beer.* The production of beer as recorded in the brewer’s daily records and reported in the Brewer’s Report of Operations, Form 5130.9. For the purpose of determining compliance with the 2,000,000 barrel limitation, production of beer by a brewer or a controlled group of brewers includes both beer produced at qualified breweries within the United States and beer produced outside the United States.

(c) *Brewers operating more than one brewery.* Brewers who operate more than one brewery shall include the combined production of beer at all their breweries when determining eligibility under the 2,000,000 barrel limitation. The reduced rate of tax applies to

the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the brewer; the brewer shall apportion the 60,000 barrels among the breweries in the manner described in the notice as provided by § 25.167(b)(3).

(d) *Controlled groups of brewers.* Members of a controlled group of brewers shall include the combined production of beer by all member brewers when determining eligibility under the 2,000,000 limitation. The reduced rate of tax applies to the first 60,000 barrels of beer removed for consumption or sale in a calendar year by the controlled group of brewers; the controlled group of brewers shall apportion the 60,000 barrels among member brewers in the manner described in each brewer’s notice as provided by § 25.167(b)(3).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5052))

[T.D. ATD-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-307, 55 FR 52738, Dec. 21, 1990; T.D. ATF-345, 58 FR 40357, July 28, 1993]

§ 25.153 Persons liable for tax.

The tax imposed by law on beer (including beer purchased or procured by one brewer from another) shall be paid by the brewer of the beer at the brewery where produced. The tax on beer transferred to a brewery from other breweries owned by the same brewer in accordance with subpart L of this part shall be paid by the brewer at the brewery from which the beer is removed for consumption or sale.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1389, as amended (26 U.S.C. 5054, 5413, 5414))

DETERMINATION OF TAX

§ 25.155 Types of containers.

Beer may be removed from a brewery for consumption or sale only in barrels, kegs, bottles, and similar containers, as provided in this part. A container which the appropriate TTB officer determines to be similar to a bottle or can will be treated as a bottle for purposes of this part. A container which the appropriate TTB officer determines to be similar to a barrel or keg and which conforms to one of the sizes prescribed for barrels or kegs in § 25.156